

1 TONY WEST  
Assistant Attorney General  
2 MELINDA L. HAAG  
United States Attorney  
3 JOHN TYLER  
Assistant Branch Director  
4 KIMBERLY L. HERB  
Illinois Bar No. 6296725  
5 Trial Attorney  
Civil Division, Federal Programs Branch  
6 U.S. Department of Justice  
P.O. Box 883  
7 Washington, D.C. 20044  
Telephone: (202) 305-8356  
8 Facsimile: (202) 616-8470

9 Attorneys for DEFENDANTS

10  
11 IN THE UNITED STATES DISTRICT COURT  
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
13 SAN FRANCISCO DIVISION  
14

15 ELECTRONIC FRONTIER FOUNDATION, )  
16 )

17 Plaintiff, )

18 vs. )

19 DEPARTMENT OF DEFENSE, ET AL., )  
20 )

21 Defendants. )  
22 )  
23 )  
24 )  
25 )  
26 )  
27 )  
28 )

Case No. 3:09-CV-05640-SI

**STIPULATION AND [PROPOSED]  
ORDER TO AMEND BRIEFING  
SCHEDULE**

1 Pursuant to Federal Rule of Civil Procedure 6(b)(1) and Civil L.R. 6-2, Plaintiff Electronic  
2 Frontier Foundation (“EFF”) and Defendants Department of Justice, Criminal Division; U.S. Secret  
3 Service; Federal Bureau Investigation; and Department of Homeland Security (collectively  
4 “Defendants”) hereby stipulate to and respectfully request that this Court extend the briefing  
5 schedule for the filing of the parties’ dispositive motions. Defendants requested the revisions to  
6 the briefing schedule due to the unavailability of counsel for one of the Defendants, as counsel’s  
7 father died on September 18, 2011.

8 1. Defendants submit that the Declaration of Kimberly L. Herb establishes good cause for  
9 the requested enlargement as follows:

- 10 a. On January 24, 2011, the Court granted EFF’s motion to consolidate the present  
11 action with *EFF v. DHS*, No. 10-cv-05526 (N.D. Cal.). (Dkt. 41.) As part of that  
12 Order, the Court also directed the parties to meet and confer and submit a joint  
13 proposal for the filing of dispositive motions in the consolidated action. (*Id.*)  
14 b. On February 25, 2011, the parties presented the Court with a proposed briefing  
15 schedule for the filing of dispositive motions. (Dkt. 46 at 1.) The Court approved  
16 the briefing schedule on March 1, 2011. That briefing schedule requires the parties  
17 to file their dispositive motions as follows: Defendants file a motion for summary  
18 judgment, including supporting documentation, on September 23, 2011; EFF files  
19 its response to Defendants’ motion for summary judgment and cross-moves for  
20 summary judgment on October 21, 2011; Defendants file their reply to their motion  
21 for summary judgment and their response to EFF’s cross-motion on November 4,  
22 2011; EFF files its reply to its cross-motion for summary judgment on November  
23 18, 2011; the Court holds a hearing on the dispositive motions on December 9,  
24 2011. (Dkt. 48 at 2-3.)  
25 c. On September 18, 2011, counsel for one of the Defendants (“agency counsel”) lost  
26 her father. Agency counsel is currently out of state due to the death of her father  
27 and is not scheduled to return for at least ten days. As a result, agency counsel will  
28

1 be unable to review Defendants' motion for summary judgment and finalize the  
2 declaration necessary to support that motion. Accordingly, Defendants requested  
3 that Plaintiffs agree to an extension of the briefing schedule.

- 4 d. On September 20, 2011, defense counsel conferred with EFF regarding the briefing  
5 schedule for the parties' dispositive motions. The parties agreed to revise the  
6 briefing schedule as follows: Defendants file their motion for summary judgment  
7 on October 21, 2011; EFF files its opposition and cross-motion on November 18,  
8 2011; Defendants file their reply and opposition to EFF's cross-motion on  
9 December 2, 2011; EFF files its reply to its cross-motion on December 16, 2011;  
10 the Court holds a hearing on the parties' dispositive motions on January 13, 2012.
- 11 2. While the requested enlargement will affect the present briefing schedule for this case,  
12 the parties believe a one-month extension of Defendants' filing deadline is warranted  
13 given the circumstances. Furthermore, the parties believe this case will be resolved on  
14 summary judgment, and thus this case can be resolved expeditiously after the filing of  
15 the parties' motions.

16 \* \* \*

17  
18 The parties respectfully request that the Court extend the briefing schedule for the filing of  
19 the parties' dispositive motions such that they may be filed as discussed in paragraph 1(d) above.

1 DATED: September 22, 2011

2 Respectfully submitted,

3 /s/ Jennifer Lynch

4 ELECTRONIC FRONTIER FOUNDATION

Jennifer Lynch, Esq.

5 Marcia Hoffman, Esq.

454 Shotwell Street

6 San Francisco, CA 94110

Telephone: (415) 436-9333

7 Facsimile: (415) 436-9993

E-mail: jlynch@eff.org

8 Jason M. Schultz

9 SAMUELSON LAW, TECHNOLOGY &

10 PUBLIC POLICY CLINIC

UC Berkeley School of Law

11 396 Simon Hall

Berkeley, CA 94720-7200

12 Telephone: (510) 642-0499

Facsimile: (510) 643-4625

13 E-mail: jschultz@law.berkeley.edu

14 Attorneys for Plaintiff

TONY WEST

Assistant Attorney General

JOSEPH P. RUSSONIELLO

United States Attorney

JOHN TYLER

Assistant Branch Director

/s/ Kimberly L. Herb

Kimberly L. Herb

Trial Attorney

United States Department of Justice

Civil Division, Federal Programs Branch

20 Massachusetts Ave. NW

Washington, DC 20530

Telephone: (202) 305-8356

Facsimile: (202) 616-8470

E-mail: Kimberly.L.Herb@usdoj.gov

Attorneys for Defendants

15  
16 **GENERAL ORDER NO. 45(X) CERTIFICATION**

17 I attest that I have obtained Jennifer Lynch's concurrence in the filing of this document.

18 /s/ Kimberly L. Herb

19 Kimberly L. Herb

20 \* \* \*

21 PURSUANT TO STIPULATION, IT IS SO ORDERED.

22  
23 Dated: 9/26/11



24 Hon. Susan Ilston

United States District Judge